

COMMISSIONER'S DIRECTIVE # 18

DECEMBER 2002

Disclaimer: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: UTILITY RECEIPTS TAX

INTRODUCTION

The purpose of this Directive is to present an overview of the Utility Receipts Tax which was enacted in 2002. This overview is intended to highlight the major areas of the new law and promote a general understanding of its basic principles.

The Department is required by statute to adopt the initial rules and prescribe the initial forms before December 1, 2002. The statute permits the Department to adopt the initial rules in the same manner that emergency rules are adopted under IC 4-22-2-37.1. The initial rules expire on the earlier of the date that the rule is superseded, amended or repealed by a permanent rule, or July 1, 2004.

AUTHORITY

House Enrolled Act 1001ss (2002) added a new Article to the Indiana Code which enacts a utility receipts tax imposed on the taxable gross receipts of a taxpayer providing the retail sale of utility services. The statute is effective on January 1, 2003.

DEFINITIONS

Gross Receipts. Gross receipts refers to anything of value, including cash or other tangible or intangible property, that a taxpayer receives in consideration for the **retail** sale of utility services for consumption before deducting any costs incurred in providing the utility services.

Receives. Receives as applied to a taxpayer means the actual coming into possession of, or the crediting to the taxpayer of gross receipts; or the payment of a taxpayer's expenses, debts, or other obligations by a third party for the taxpayer's direct benefit.

Taxable Gross Receipts. Taxable gross receipts means the remainder of all gross receipts that are not exempt from tax less all deductions that are allowed under the statute.

Taxable Year. Taxable year means the year that a taxpayer uses for purposes of filing the taxpayer's federal income tax return. If a taxpayer does not file a federal income tax return, then the term means a calendar year.

Taxpayer. Taxpayer includes the following:

1. Assignee;
2. Receiver;
3. Commissioner;
4. Fiduciary;
5. Trustee;
6. Institution;
7. Consignee;
8. Firm;

9. Partnership;
10. Limited liability partnership;
11. Joint venture;
12. Pool;
13. Syndicate;
14. Bureau;
15. Association;
16. Cooperative association;
17. Corporation;
18. Political subdivision of the State of Indiana, to the extent engaged in private or proprietary activities or business;
19. Trust;
20. Limited liability company; or
21. Other group or combination acting as a unit;

regardless of whether the entity is exempt from adjusted gross income tax under IC 6-3 or exempt from federal income tax under the Internal Revenue Code.

Telecommunication Services. Telecommunication services means the transmission of messages or information by using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities.

The term does not include value added services in which computer processing applications are used to act on the form of the information for purposes other than transmission.

The term does not include value added services providing text, video graphic or audio program content for a purpose other than transmission.

The term does not include the transmission of video programming or other programming provided by a television broadcast station or a radio station, including cable TV, direct broadcast satellite, or digital television.

Utility Service. Utility service means the furnishing of any of the following:

1. Electrical energy.
2. Natural gas used for heat, light, cooling or power.
3. Water.
4. Steam.
5. Sewage.
6. Telecommunication services.

IMPOSITION

The utility receipts tax is imposed upon the receipt of the entire taxable gross receipts of a taxpayer that is a resident or domiciliary of Indiana, and the taxable gross receipts derived from activities or business or any other sources within Indiana by a taxpayer that is not a resident or domiciliary of Indiana.

The tax is imposed at a rate of one and four-tenths percent (1.4%).

Every "S" Corporation or other entity exempt from federal income taxation under Section 1361 of the Internal Revenue Code, partnership, limited liability company, and limited liability partnership is liable for the utility receipts tax. No utility receipts tax is imposed on a partner's, member's or shareholder's distributive share of the entity's gross income.

TAXABLE RECEIPTS

The following receipts are subject to the utility receipts tax:

1. The retail sale of utility services for consumption.
2. Judgments or settlements as compensation for lost retail sales.
3. Sales to a reseller if the utility is used in hotels, mobile home parks or marinas.
4. Sales of water or gas to another for rebottling.
5. Installation, maintenance, repair, equipment, or leasing services provided to a commercial or domestic consumer that are directly related to the deliver of utility services, and charges for removal of the equipment from such consumer upon termination of service.
6. All other receipts not segregated between retail and non-retail transactions.

NOTE: Generally, retail receipts from all utility services consumed within Indiana are subject to the utility receipts tax regardless of the point of generation or transmission across state lines. Receipts from the provision of mobile telecommunication services are subject to utility receipts tax to the extent that the receipts are sourced to Indiana pursuant to IC 6-8.1-15.

DEDUCTIONS

The following deductions are permitted against the taxable receipts for purposes of the utility receipts tax.

1. Each taxable year a taxpayer is entitled to deduct from the taxpayer's gross receipts an amount equal to \$1,000. This amount is prorated if the taxpayer's tax period is less than one year. NOTE: An affiliated group that files a consolidated return is entitled to only one deduction.
2. If a taxpayer reports the taxpayer's gross receipts on an accrual basis, the taxpayer is entitled to deduct bad debts from the taxpayer's gross receipts in the same manner provided in IC 6-2.5-6-9.
3. If, for federal income tax purposes a taxpayer is allowed a depreciation deduction for a particular taxable year with respect to a resource recovery system, and the resource recovery system processes solid waste or hazardous waste, the taxpayer is entitled to a deduction equal to the depreciation deduction for an Indiana resource recovery system that the taxpayer is allowed under Sections 176 and 179 of the Internal Revenue Code.
4. The taxpayer is entitled to deduct from the gross receipts the amount paid by the taxpayer for the return of an empty container of the type customarily returned by the buyer of the contents for reuse as a container if the taxpayer included such deposits in its gross receipts.
5. The taxpayer is entitled to a deduction for gross receipts exempt from taxation under IC 6-8.1-15 and the Mobile Telecommunications Sourcing Act.

NONTAXABLE RECEIPTS

The following receipts are excluded from the computation of the utility receipts tax.

1. Sales to the U.S. Government to the extent prohibited by the U.S. Constitution.
2. Collections by a taxpayer of a tax, fee or surcharge imposed by a state, political subdivision, or the United States if the tax is imposed solely on the sales at retail of utility services, and the taxpayer collects the tax separately as an addition to the price of the utility service sold.
3. Wholesale sales to another generator or reseller of utilities.
4. Holding company receipts from member electric cooperatives.

5. Joint agency receipts from member municipal electric utilities.
6. Refundable deposits paid by a customer to the taxpayer.
7. An occasional sale of utility services by a taxpayer that is not regularly engaged in the trade or business of selling utility services is exempt from the tax.

EXEMPT ENTITIES

Gross receipts received by the following entities are exempt from the utility receipts tax.

1. Conservancy districts established under IC 14-33-20 or IC 13-3-4.
2. Regional water, sewage, or solid waste districts established under IC 13-26 or IC 13-3-2.
3. A nonprofit corporation formed solely for the purpose of supplying water to the public.
4. A county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2.
5. A nonprofit corporation formed for the purpose of providing a combination of water and sewer and sewage service to the public.
6. A county onsite waste management district established under IC 36-11.

ESTIMATED PAYMENTS AND RETURNS

Every taxpayer whose annual tax liability exceeds one thousand dollars (\$1,000) is required to file and pay the utility receipts tax on a quarterly basis. The taxpayer shall pay to the Department twenty-five percent (25%) of the annual estimated tax or the exact amount of utility receipts tax that is due for that quarter.

A taxpayer that uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax return and pay the tax due on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer's taxable year does not end on December 31, the due dates for filing the return and paying the tax are the 20th day of the fourth, sixth, ninth, and twelfth month of the taxpayer's taxable year.

If a taxpayer's estimated quarterly utility receipts tax liability exceeds ten thousand dollars (\$10,000), the taxpayer shall pay the estimated utility receipts tax due by electronic funds transfer (EFT) or by delivering in person

or by overnight courier a payment by cashier's check, certified check, or money order to the Department. The transfer or payment shall be made on or before the date that the tax is due. If the taxpayer's utility receipts tax payment is made by electronic funds transfer (EFT), the taxpayer is not required to file an estimated utility receipts tax return. To register for electronic funds transfer, form EFT-1 must be completed and remitted to the Department by fax (317-615-2691) or mailed to:

Indiana Department of Revenue
P. O. Box 6077
Indianapolis, IN 46206-6077

Form EFT-1 can be obtained on the Department's web site (www.state.in.us/dor/). Questions concerning the registration process can be directed to 317-615-2695.

ANNUAL RETURNS AND PAYMENTS

Every taxpayer who receives more than one thousand dollars (\$1,000) in receipts from the retail sale of utility services is required to file an annual utility receipts tax return, Form URT. Any taxpayer who does not file an annual utility receipts tax return for a taxable year may be required to execute and file with the Department a sworn statement that the taxpayer did not receive more than one thousand dollars (\$1,000) of taxable gross receipts during the taxable year.

When the taxpayer files an annual utility receipts tax return, the taxpayer shall pay to the Department the total utility receipts tax liability incurred by the taxpayer for that taxable year, minus the total estimated payments that were made for that taxable year.

A taxpayer who used a taxable year that ends on December 31 shall file the taxpayer's annual return on or before April 15 of the immediately succeeding year. A taxpayer, whose taxable year does not end on December 31, shall file the annual return on or before the fifteenth day of the fourth month after the close of the taxpayer's tax year.

CONSOLIDATED RETURN OF AN AFFILIATED GROUP

Corporations are considered to be affiliated if at least eighty percent (80%) of the voting stock of one corporation is owned by the other corporation. Every corporation affiliated with another corporation is affiliated with every corporation that is affiliated with such other corporation. All corporations so affiliated constitute an affiliated group.

Corporate members of an affiliated group that are incorporated in Indiana or are authorized to do business in Indiana may file a consolidated utility receipts tax return.

An affiliated group must elect at the time the group files its first annual return whether or not the group will file a consolidated utility receipts tax return, or whether each corporate member of the group will file a separate utility receipts tax return. Once an election is made, the group must file the utility receipts tax returns in the same manner as the group's first annual return is filed, unless the Department allows the group to change the manner in which it files its utility receipts tax return.

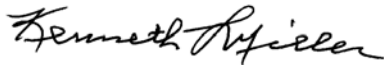
If a consolidated return is filed, the return can be filed by any member of the group incorporated or authorized to do business in Indiana. The filing member shall remain the filing member on all subsequent consolidated returns filed by the affiliated group, unless the Department allows another member to file the group's consolidated return.

TRANSITIONAL PROCEDURES

There is transitional language in HEA 1001ss that gives direction on how a fiscal year taxpayer will file its initial utility receipts tax return. As stated earlier, the annual return is due on the fifteenth day of the fourth month following the close of the taxpayer's taxable year.

A fiscal year taxpayer for purposes of the utility receipts tax has an initial short tax year that begins on January 1, 2003 and ends on the day preceding the day that the taxpayer's next taxable year under the Internal Revenue Code begins.

If a taxpayer is filing a short year return, the one thousand dollar (\$1,000) taxpayer deduction, and the resource recovery system tax deduction will be multiplied by a fraction. The numerator of the fraction is the number of days remaining in the taxpayer's taxable year after December 31, 2002, and the denominator is the total number of days in the taxable year under the Internal Revenue Code for the purposes of federal income taxation.

A handwritten signature in cursive script, reading "Kenneth L. Miller".

Kenneth L. Miller
Commissioner